

## **SUBCOMMITTEE NO. 2**

## **Agenda**

**S. Joseph Simitian, Chair**  
**Alan Lowenthal**  
**John J. Benoit**



**Thursday, April 23, 2009**  
**9:30 a.m. or upon adjournment of session**  
**Room 2040**

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### **Resources—Environmental Protection—Energy—Transportation**

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## 0540 Secretary for Resources

**Background.** The Secretary for Resources heads the Resources Agency. The Secretary is responsible for overseeing and coordinating the activities of the boards, departments, and conservancies under the jurisdiction of the Resources Agency.

**Budget Act.** The *2009-10 Budget Act* includes \$87.5 million to support the Secretary for Resources. This is a 40 percent decrease over estimated expenditures in the current year primarily due to reduced bond fund expenditures.

<b>Summary of Expenditures</b>				
<i>(dollars in thousands)</i>	<b>2008-09</b>	<b>2009-10</b>	<b>\$ Change</b>	<b>% Change</b>
<b>Type of Expenditure</b>				
Administration	\$ 104,383	\$ 69,764	-\$34,619	-33.2
CALFED Bay-Delta Program	42,564	17,814	-24,750	-58.2
<b>Total</b>	<b>\$ 146,947</b>	<b>\$ 87,578</b>	<b>-\$59,369</b>	<b>-40.4</b>
<b>Funding Source</b>				
General Fund	\$ 5,377	\$ 5,736	\$ 359	6.7
Special Funds	4,621	3,467	-1,154	-25.0
Bond Funds	107,525	61,000	-46,525	-43.3
<i>Budget Act Total</i>	<i>117,523</i>	<i>70,203</i>	<i>-47,320</i>	<i>-40.3</i>
Federal Trust Fund	12,778	8,471	-4,307	-33.7
Reimbursements	16,646	8,904	-7,742	-46.5
<b>Total</b>	<b>\$ 146,947</b>	<b>\$ 87,578</b>	<b>-\$59,369</b>	<b>-40.4</b>

### Mike Chrisman, Secretary for Resources

- Overview of Resources Agency
- Discussion of Federal Funds
- Salmon Recovery

## 1. Environmental License Plate Fund Fee Increase

**ELPF.** The Environmental License Plate Fund (ELPF) provides support to numerous conservancies and departments within the Resources Agency. The ELPF has a structural imbalance. Without a fee increase, and keeping expenditures constant the 2009-10 fiscal year expenditures would exceed available resources by \$7 million.

**Trailer Bill.** The trailer bill language would raise the environmental license plate fee by ten percent.

**Budget Act.** The *2009-10 Budget Act* does not include trailer bill authorizing the ELPF fee increase. The Budget Act does provide decreased funding to departments and conservancies from the ELPF by \$4,720,000, but this decrease would be even more dramatic without the fee increase.

- Secretary for Resources – Reduction to out of state travel and equipment replacement program: -\$50,000
- California Conservation Corps – Reduction to administration: -\$300,000
- CalFire – Environmental Protection Program field coordinator reduction (-\$15,000); Fire and Resource Assessment Program resource management strategies design (-\$30,000): Total reduction of -\$45,000
- Department of Fish and Game – Fund shift of \$3 million to the Fish and Game Preservation fund for wardens: -\$3 million
- State Coastal Conservancy – Reduction to Ocean Protection Council research on algal blooms: -\$257,000
- Santa Monica Mountains Conservancy – Reduction to consultant contracts for project planning and implementation: -\$50,000
- Sierra Nevada Conservancy – Reduction to interagency agreements: -\$500,000
- Department of Water Resources – Reduction in work on the Trinity River Restoration Program: -\$60,000
- CalEPA, Department of Pesticide Regulation – Fund shift of \$458,000 with the Department of Pesticide Regulation Fund

**Staff Comment.** Due to concerns over the role of the Secretary for Resources in protecting fish species, especially salmon, action on budget items for the Secretary for Resources will be withheld until the Secretary's actions to protect salmon have been reviewed.

## 3850 Coachella Valley Mountains Conservancy

**Background.** The Coachella Valley Mountains Conservancy (CVMC) acquires and holds, in perpetual open space, mountainous lands surrounding the Coachella Valley and natural community conservation lands within the Coachella Valley.

**Budget Act.** The 2009-10 Budget Act includes \$517,000 to support CVMC. This is a dramatic decrease from current year estimated expenditures due to the near elimination of bond funds for the conservancy.

<b>Summary of Expenditures</b>				
<i>(dollars in thousands)</i>	<b>2008-09</b>	<b>2009-10</b>	<b>\$ Change</b>	<b>% Change</b>
<b>Type of Expenditure</b>				
Coachella Valley Mountains Conservancy	\$442	\$517	\$75	17.0
Capital Outlay	18,375	0	-18,375	-100.0
<b>Total</b>	<b>\$18,817</b>	<b>\$517</b>	<b>-\$18,300</b>	<b>-97.3</b>
<b>Funding Source</b>				
Special Funds	\$303	\$318	\$15	5.0
Bond Funds	17,905	60	-17,845	-100.0
<i>Budget Act Total</i>	<i>18,208</i>	<i>378</i>	<i>-17,830</i>	<i>-97.3</i>
Reimbursements	609	139	-470	-77.2
<b>Total</b>	<b>\$18,817</b>	<b>\$517</b>	<b>-\$18,300</b>	<b>-97.3</b>

### 1. Opportunity Land Acquisitions

**Proposition 84.** California voters, in November 2006, passed Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006, which provides \$5.388 billion in general obligation bonds for environmental and resource purposes. The Proposition 84 bond language allocated funds to the state's conservancies in order to guarantee land acquisitions and environmental restoration projects. Coachella Valley Mountains Conservancy was allocated \$36 million through Proposition 84.

**Budget Act.** The *2009-10 Budget Act* included Proposition 84 bond funds for many of the state's conservancies. However, the *2009-10 Budget Act* includes no bond funds for Coachella Valley Mountains Conservancy to make land purchase grants.

**Land Value Appraisals.** The Coachella Valley Mountains Conservancy's bond funds request was initially denied by the Department of Finance due to the conservancy not seeking third party verification of the property value appraisals for land purchased. However, the conservancy has now adopted regulations requiring that the conservancy and all its grantees always seek a third party independent review of the property value appraisals prior to purchasing land. As this administrative problem has been corrected, it is no longer a reason for holding back the conservancy's bond funding.

**Staff Recommendation.** Staff recommends that the Subcommittee appropriate \$6 million in Proposition 84 bond funds, as well as \$343,000 in Prop 12 funds and \$456,000 in Prop 40 funds, to the Coachella Valley Mountains Conservancy for land acquisition. This will allow the conservancy to move forward with its top priority land purchase.

## 3860 Department of Water Resources

**Background.** The Department of Water Resources (DWR) protects and manages California's water resources. In this capacity, the department maintains the State Water Resources Development System, including the State Water Project. The department also maintains public safety and prevents damage through flood control operations, supervision of dams, and water projects. The department is also a major implementing agency for the CALFED Bay-Delta Program, which is putting in place a long-term solution to water supply reliability, water quality, flood control, and fish and wildlife problems in the San Francisco Bay Delta.

Additionally, the department's California Energy Resources Scheduling (CERS) division manages billions of dollars of long-term electricity contracts. The CERS division was created in 2001 during the state's energy crisis to procure electricity on behalf of the state's three largest investor owned utilities (IOUs). The CERS division continues to be financially responsible for the long-term contracts entered into by the department. (Funding for the contracts comes from ratepayer-supported bonds.) However, the IOUs manage receipt and delivery of the energy procured by the contracts. (More on the CERS division of DWR is included in the Energy and Utilities section of this report.)

**Budget Act.** The Governor's Budget proposes \$6.3 billion to support DWR in the budget year. This is a 20 percent decrease over estimated expenditures in the current year, mainly the result of a decrease in capital outlay and California Energy Resources Scheduling (CERS) funding. General Fund support for the department is proposed to decrease by nearly 20 percent. The \$4.3 billion in CERS funding is not subject to the Budget Act (these funds are primarily for energy payments related to the 2001 electricity crisis). The CERS funds will significantly decrease in 2012 as the majority of the power contracts are paid off.

<b>Summary of Expenditures</b>				
<i>(dollars in thousands)</i>	<b>2008-09</b>	<b>2009-10</b>	<b>\$ Change</b>	<b>% Change</b>
<b>Type of Expenditure</b>				
California Water Plan	\$ 848,513	\$ 150,139	-\$698,374	-82.3
Implementation of the State Water Resources Development System	861,730	903,861	42,131	4.9
Public Safety and Prevention of Damage	896,695	436,090	-460,605	-51.4
Central Valley Flood Protection Board	7,828	8,549	2,000	25.5
Services	9,425	9,660	235	2.5
California Energy Resources Scheduling	4,601,388	4,271,583	-329,805	-7.2
Capital Outlay	668,530	489,797	-178,733	-26.7
Administration	65,319	67,155	1,836	2.8
<i>less distributed administration</i>	<i>-65,319</i>	<i>-67,155</i>	<i>-1,836</i>	<i>2.8</i>
Loan Repayment Program	-4,013	-4,013	0	0.0
<b>Total</b>	<b>\$ 7,890,096</b>	<b>\$ 6,265,666</b>	<b>-\$1,624,430</b>	<b>-20.6</b>
<b>Funding Source</b>				
General Fund	\$ 161,324	\$ 129,590	-\$31,734	-19.7
Special Funds	527,896	493,655	-34,241	-6.5
Bond Funds	2,503,681	1,285,720	-1,217,961	-48.7
<i>Budget Act Total</i>	<i>3,192,901</i>	<i>1,908,965</i>	<i>-1,283,936</i>	<i>-40.2</i>
Federal Trust Fund	13,530	13,922	392	2.9
DWR Electric Power Fund	4,601,388	4,271,583	-329,805	-7.2
Bosco-Keene Renewable Resources Investment Fund	20	0	-20	-100.0
Reimbursements	82,257	71,196	-11,061	-13.5
<b>Total</b>	<b>\$ 7,890,096</b>	<b>\$ 6,265,666</b>	<b>-\$1,624,430</b>	<b>-20.6</b>

## 1. State Water Project Accountability Issues

**Background.** The State Water Project (SWP) is the nation's largest state-built water conveyance system, providing water to 23 million Californians and 755,000 acres of agriculture. The SWP moves water mostly from Northern California to parts of the San Francisco Bay Area, the Central Valley, and Southern California. The DWR protects and manages California's water resources. In this capacity, the department maintains the SWP. The project was initiated by legislation in 1959 under the Burns-Porter Act, with voters ratifying in November 1960 the \$1.75 billion bond for the project authorized in the act.

**Paying for the SWP System.** Users of the water system ("SWP contractors") fund most of SWP's capital and operational costs through water user fees. Other sources of funding for the project include federal funding (mainly for flood control), state general obligation bonds (mainly for environmental programs), and the General Fund combined with user fees (recreation and fish and wildlife programs). The project is mainly funded by users of the water system (often referred to as SWP contractors). These user revenues are commonly referred to as SWP funds. However, there are other significant sources of funding related to SWP. Specifically, the federal government provides a share of the costs for flood control projects related to SWP, the General Fund has supported related recreation and fish and wildlife programs, and state general obligation bond funds have supported several related environmental programs, including CALFED.

**State Water Project Funding is "Off-Budget".** When a fund is "off-budget" it means that the funds are not appropriated in the annual budget bill and that the Legislature cannot annually change the level of financial support for the program through the budget. As an off-budget program the SWP has "continuous appropriation" authority to spend its revenues, and does not need annual Legislative authorization to support its positions, operating costs, or capital outlay expenditures. While DWR must seek approval from the Legislature to establish permanent new positions, it does not need additional legislative approval for the funding to support them. That is because the expenditure authority for these positions is already provided off-budget.

**LAO Analysis.** The LAO is concerned that the role of SWP has changed substantially from its inception in 1960. In the past, SWP operated as a discrete, self-contained program with sufficient fiscal oversight provided by SWP contractors who pay most of the project's costs. However, this situation has changed. Specifically, the LAO found that SWP had developed increasing fiscal and programmatic ties to other state on-budget programs, such as CALFED. The SWP operation has created significant liabilities for other programs and funding sources, including the General Fund, without any legislative oversight. These are reasons that the LAO believes justify placing this program under regular legislative budget scrutiny along with requests for additional positions. The LAO's analysis has led the Legislative Analyst to conclude that the Legislature has the authority to do so.

The LAO is concerned that the process DWR follows to develop SWP budgets lacks checks and balances that would help ensure accountability. Review of the now \$900 million budget takes place internally at DWR, with ultimate approval coming from within the department and DOF. While the SWP seeks and receives some advice from SWP water contractors, it does not actually review its budget with the contractors prior to the submission of departmental requests for



additional positions to the Legislature. At no point is the budget vetted and approved in a public setting, nor do ratepayers—those affected most by spending decisions—have an opportunity to review the budget prior to approval, as is the general practice at other state agencies.

The only public review of the SWP spending plan takes place at legislative budget hearings, and only then in the context of specific requests for position authority. Consequently, this complicates the Legislature's ability to fully evaluate SWP position requests in the context of the SWP's total current-year staffing of 1,509 positions. This relative lack of budgetary oversight also applies to SWP's capital projects, although there is some limited oversight provided by DOF and the bonding agencies in cases in which the SWP issues revenue bonds to finance the construction costs of its projects. Because of broad and ongoing off-budget expenditure authority, the department is not required to submit funding requests in conjunction with position requests.

The LAO found that lack of transparency in the development of the SWP budget appears to have triggered increasing billing protests from SWP contractors. This, in turn, has led to increases in staffing and increased costs to handle the billing protests, which are ultimately passed on to water ratepayers. The LAO argues that this upward expenditure cycle is due in part to the lack of effective budgetary oversight of the SWP.

There is also growing recognition of SWP's role in contributing both to the causes of, and the potential solutions to, water-related problems in the Delta. This has major policy and fiscal implications for a number of state programs. For these reasons, the LAO continues to recommend the enactment of legislation that would make SWP subject in all respects to the annual legislative budget process.

**Water Contractors' Letter.** The State Water Project contractors have submitted a letter to the Subcommittee stating their opposition to bringing the SWP on-budget.

**Missing Report.** As part of the *2007-08 Budget Act*, the Legislature passed Supplemental Report Language that required the following:

“As an alternative to placing the SWP “on budget,” the department shall submit **annually** with their January 10 budget a supplemental budget that would detail SWP funds that (a) contribute to projects in the Delta, (b) are a cost share of state funds, (c) require any future commitment of state funds, and (d) any SWP funded positions that are transferred to state to be then funded on budget with state funds.”

The Budget Committee received such a budget document in May of 2008. No report has been received for 2009.

**Staff Analysis.** SWP operations impact the critical water resources for 23 million Californians. As the Legislature debates new water bonds for water conveyance infrastructure and resources management in the Delta, it would be beneficial for the Legislators to be aware of what financial resources the SWP is placing towards these efforts already.

**Staff Recommendation.** Staff recommends that the Subcommittee adopt trailer bill language requiring the following:

On or before January 10, 2010, DWR shall report to the chairs of the fiscal committees in both houses on the SWP budget. The report shall include the expenditures of SWP by program for the last three years starting with 2007-08, and total revenues for each of those years. Additionally, the report shall include for each year presented the number of SWP positions and any non-SWP funds that are used as a cost-share toward SWP projects or operations.

## 2. State Water Project Facilities Fish and Wildlife Enhancement and Recreation

**Davis-Dolwig Act.** Chapter 867, Statutes of 1961 (AB 261, Davis), also known as the Davis-Dolwig Act, states the broad intent of the Legislature that State Water Project (SWP) facilities be constructed “in a manner consistent with the full utilization of their potential for the enhancement of fish and wildlife and to meet recreational needs.” The Department of Water Resources (DWR) is charged with implementing the act as part of planning for construction of SWP facilities. The Davis-Dolwig Act does not provide criteria specifying what kinds of recreation facilities or fish and wildlife enhancements are to be developed, nor does it require legislative review or approval of such facilities or enhancements.

**DWR has Authority to Determine Cost-Share.** DWR determines what share of the costs of SWP facilities relate to fish and wildlife enhancements and recreation and are Davis-Dolwig costs not subject to reimbursement by state water contractors. In practice, most Davis-Dolwig costs are related to recreation. Most fish and wildlife costs are classified as being related to “preservation” of these species, rather than the “enhancement” of fish and wildlife, and therefore are not usually attributed to Davis-Dolwig.

There are two primary costs under the Davis-Dolwig Act. First is the capital cost of the creation of recreation facilities when the SWP was constructed (such as the purchase of additional land for hiking trails and camping). The second is an allocation to recreation of the total annual budget of the overall SWP, based on an assessment of each facility’s value as a recreational asset. This is an indirect form of cost allocation, whereby a portion of the operation and capital cost at every SWP facility is allocated to recreation. These indirect recreation-related costs, on a statewide basis, average about 3 percent for operations and 6 percent for capital spending.

**General Fund Role in Davis-Dolwig Act.** The Davis-Dolwig Act states that DWR is not to include costs of fish and wildlife enhancements and recreation in charges levied on the SWP contractors. The act states the intent of the Legislature that such costs be paid for by an annual appropriation from the General Fund. The act, however, did not actually appropriate any General Fund monies to pay for Davis-Dolwig costs.

Since 1961, DWR has allocated over \$464 million of SWP costs to Davis-Dolwig. Of this amount, \$107 million has been paid from a combination of tidelands oil revenue (\$90 million) and the General Fund (\$17 million). A further \$202 million in Davis-Dolwig costs fronted by SWP contractors was offset with monies owed by them to the state, which had fronted the costs for SWP construction projects. The remaining \$155 million allocated by DWR for Davis-Dolwig recreation costs has been paid for, on an interim basis, by SWP contractors.

**Budget Act.** The *2009-10 Budget Act* includes no funds for the SWP facilities fish and wildlife enhancement and recreation.

**Governor's Budget.** The Governor's Budget proposed a total of \$38.5 million for Davis-Dolwig related costs. These were:

- \$30,984,000 from Proposition 84 for development, rehabilitation, acquisition, and restoration of SWP facilities for fish and wildlife enhancement and recreation.
- \$7.5 million from Harbors and Watercraft Fund for on-going operations funding for SWP recreation.
- Trailer bill language.

**Trailer Bill.** The Governor proposed trailer bill language to provide a continuously appropriated annual transfer of \$7.5 million from the Harbors and Watercraft Fund for payment of the recreation component of the SWP. This \$7.5 million would pay for on-going operations of SWP recreation, but would become "off-budget" and not subject to Legislative appropriation each year. The trailer bill language also includes an annual reporting requirement on what the funds were used for during the previous budget year.

**LAO Recommendation.** The LAO recommends that the Legislature deny the request for Davis-Dolwig funding in the budget year and reject the proposed statutory change to provide an ongoing appropriation from the Harbors and Watercraft Revolving Fund to pay Davis-Dolwig costs. The LAO further recommends that the Legislature carefully evaluate the policy and legal implications for the state before adopting the administration's proposal to modify state law to declare that no historical state funding obligation exists for Davis-Dolwig costs. To this effect, the LAO makes a series of recommendations:

- The LAO recommends that Davis-Dolwig be amended to specify that only costs related to construction of recreation facilities at new SWP facilities are to be paid for by the state under Davis-Dolwig. The LAO advises the Legislature to specify that there is to be no allocation of total SWP costs to recreation. The recreation cost component of SWP capital projects would be removed, presumably allowing revenue bonds to be sold and construction to continue on pending SWP projects.
- The LAO recommends that the Legislature specify that SWP is no longer to incur operational and maintenance costs for state recreation areas, or use SWP funds for these purposes. These costs should be considered for funding alongside any other budget requests for the state park system, and be subject to legislative review and approval in the annual budget process. In particular, the LAO thinks that DWR should not incur any further costs related to the operation of the SRA at Lake Perris.
- The LAO also recommends that the Legislature specify that any SWP recreation facilities that are to be developed or improved under a regulatory requirement shall not be

considered eligible state costs under Davis-Dolwig. This approach is consistent with legislative policy on how regulatory compliance costs are to be funded. If this recreation spending is required by a federal, state, or local regulatory agency as a condition of approving the construction or operation of an SWP facility, these regulatory costs should be considered a project cost and paid for by SWP contractors.

**Staff Recommendation.** Staff recommends that the Subcommittee hold this item open.

### 3. CALFED General Fund Reductions

**LAO Recommendation.** The *2009-10 Budget Act* includes a total of \$14 million from the General Fund for CALFED. Of this amount, about one-half (\$7.2 million) is for CALFED program oversight of various state agencies. The majority of the remaining funding is allocated to Department of Water Resources (DWR) for a variety of specific CALFED programs. The General Fund contribution in each of these DWR-administered programs is only three percent of the total state funds (including bond funds and SWP funds) that are spent on these programs.

The LAO's analysis indicates that the CALFED programs in DWR proposed to receive General Fund support may have merit and work towards achieving CALFED's goals. Most of the programs proposed for General Fund support, such as the Delta levees subventions program, have existed in some form or another prior to the creation of CALFED. In the intervening years since these programs began, however, multiple funding sources in addition to the General Fund have become available to support them. This includes substantial increases in available bond funds, many of which are allocated specifically to CALFED. Now, the General Fund contributes less than 3 percent overall to these CALFED programs.

In light of the magnitude of the state's General Fund fiscal problems, the LAO thinks that it is a good time for the Legislature to reconsider whether DWR's CALFED activities warrant continued General Fund support. The LAO believes such a reassessment of priorities is reasonable, given the level of support available to CALFED from other funding sources (approximately \$225 million for 2009-10). The LAO therefore recommends that CALFED's base General Fund budget be reduced by \$5.9 million by reducing or eliminating General Fund support in two programs: Delta levees and water use efficiency.

*Delta Levees: \$4.9 Million General Fund Savings.* The budget allocates \$4.9 million from the General Fund for levee maintenance and repairs within the Delta. This program pertains to levees outside of the state's Central Valley flood control system, mainly Delta islands, that are operated by local reclamation districts. While improving these levees has some merit, the need to continue to stabilize levees on many islands in the Delta is currently being assessed as the department evaluates alternatives for Delta conveyance. Therefore, it is uncertain whether preserving these levees will remain a priority for state funding. The availability of other fund sources (mainly bond funds) means that General Fund support can be eliminated without significantly impacting the program.

*Water Use Efficiency: \$1 Million General Fund Savings.* The General Fund provides \$1.4 million of the nearly \$27 million budgeted for CALFED water use efficiency programs, mostly from bond funds. Of the \$1.4 million, about \$1 million is allocated to the California Irrigation Management Information System (CIMIS), a program operated jointly with the University of California, Davis, intended to assist irrigators in managing their water resources efficiently. The LAO is concerned that the original purpose of the program, agricultural water efficiency, has been changed. Many of the 6,000 registered users of the system are not irrigators, but are water agencies, researchers, educators, and water consultants. In the LAO's view, General Fund support for the water use efficiency program can be reduced by \$1 million without significantly impacting the original program scope. The remaining \$350,000 of the General Fund support is used for review of urban water conservation plans, a high-priority activity for which an alternative funding source is not likely to be available.

**Staff Recommendation.** Staff recommends that the Subcommittee take comments from the department and the public. The Subcommittee may wish to consider these cuts when spring revenue numbers become known.

#### 4. Central Valley Flood Protection Board

**Background.** Legislation was enacted in 2007 (AB 5 and SB 17) that renamed the Reclamation Board the Central Valley Flood Protection Board (Board). The Board is required to act independently of the Department of Water Resources and continue to exercise all of its powers, duties, purposes, responsibilities, and jurisdiction. The membership of the Board increased from seven to nine members, seven being appointed by the Governor and subject to Senate confirmation, and two members serving as non-voting ex officio members. Salary of the seven appointed members will be equivalent to the members of the Air Resources Board. Furthermore, AB 162 (Wolk, 2007) requires the Board to review revised safety elements of local governments' general plans prior to the adoption of the amended safety element.

**Budget Act.** The *2009-10 Budget Act* includes \$7.5 million General Fund and \$1 million in Proposition 1E bond funds for support of the Central Valley Flood Protection Board.

**Finance Letter.** The Governor has submitted a spring finance letter that would shift \$2,190,000 General Fund from the Central Valley Flood Protection Board to the Public Safety and Prevention of Damage program.

**Staff Comment.** The Central Valley Flood Protection Board was created in 2007 and received funding for the first time in the *2008-09 Budget Act*. At the time it was understood that all of the Board's expenses were not known. Now that it is understood that the Board can operate with fewer funds than it was initially appropriated, the Legislature may wish to consider reverting the additional funds rather than shift them to another program within DWR.

## 3940 State Water Resources Control Board

**Background.** The State Water Resources Control Board (SWRCB), in conjunction with nine semi-autonomous regional boards, regulates water quality in the state. The regional boards—which are funded by the state board and are under the state board's oversight—implement water quality programs in accordance with policies, plans, and standards developed by the state board.

The board carries out its water quality responsibilities by: (1) establishing wastewater discharge policies and standards; (2) implementing programs to ensure that the waters of the state are not contaminated by underground or aboveground tanks; and (3) administering state and federal loans and grants to local governments for the construction of wastewater treatment, water reclamation, and storm drainage facilities. Waste discharge permits are issued and enforced mainly by the regional boards, although the state board issues some permits and initiates enforcement actions when deemed necessary.

The state board also administers water rights in the state. It does this by issuing and reviewing permits and licenses to applicants who wish to take water from the state's streams, rivers, and lakes.

**Budget Act.** The *2009-10 Budget Act* includes \$598.6 million to support the SWRCB in the budget year. This proposal is approximately \$178 million less than current year expenditure levels, mainly due to a reduction in bond funding. General Fund appropriation is expected to stay nearly the same.

<b>Summary of Expenditures</b>				
<i>(dollars in thousands)</i>	2008-09	2009-10	\$ Change	% Change
<b>Type of Expenditure</b>				
Water Quality	\$ 765,487	\$ 586,951	-\$178,536	-23.3
Water Rights	11,894	11,658	-236	-2.0
Administration	21,097	21,141	44	0.2
<i>less distributed administration</i>	<i>-21,097</i>	<i>-21,141</i>	<i>-44</i>	<i>0.2</i>
<b>Total</b>	<b>\$ 777,381</b>	<b>\$ 598,609</b>	<b>-\$178,772</b>	<b>-23.0</b>
<b>Funding Source</b>				
General Fund	\$ 40,283	\$ 40,575	\$ 292	0.7
Special Funds	378,822	364,874	-13,948	-3.7
Bond Funds	178,217	7,395	-170,822	-95.9
<i>Budget Act Total</i>	<i>597,322</i>	<i>412,844</i>	<i>-184,478</i>	<i>-30.9</i>
Federal Trust Fund	128,470	128,975	505	0.4
Reimbursements	6,198	8,062	1,864	30.1
State Water Quality Control Fund	27,723	31,078	3,355	12.1
State Water Pollution Control Revolving Fund	5,532	5,532	-	0.0
Petroleum Underground Storage Tank Financing Account	12,136	12,118	-18	-0.2
<b>Total</b>	<b>\$ 777,381</b>	<b>\$ 598,609</b>	<b>-\$178,772</b>	<b>-23.0</b>

## 1. Methyl Mercury in Wetlands

**Mercury.** Mercury is a rare, dense metal, slightly more common than gold in the earth's crust. It has unusual properties that have made it valuable in metallurgy, electrical systems, and chemical processes. It is a liquid at ordinary temperatures and evaporates when exposed to the atmosphere. Environmental mercury contamination concerns in California are focused less on atmospheric sources, and more on aquatic sources for several natural and historic reasons. During the Gold Rush era more than 220,000,000 pounds of elemental mercury were produced in California. There were few controls on the dispersion of mercury from these operations, leading to significant increases in environmental mercury concentrations in affected soil, sediment, plants, fish, and other animals.

**Methyl Mercury.** Of even greater environmental concern is the presence of methyl mercury, an organic form of mercury that is a potent neurotoxin and is especially detrimental to developing

fetuses and young children (less than about 6 years old). Methyl mercury accumulates and biomagnifies in the food chain, reaching highest concentrations in predatory fish, many of which are prized by sports fishermen. Numerous water bodies in California have fish-consumption advisories because of mercury contamination from historical mining. Several of these advisories are based on data collected by the United States Geological Survey (USGS), including those in Trinity County, and the Bear, Yuba, and American River watersheds in the Sierra Nevada.

**Role of Wetlands.** Mercury from hydraulic and placer mining for gold has been transported with sediments downstream into the San Francisco Bay/Sacramento-San Joaquin Delta estuary, where it has likely contributed to elevated mercury concentrations in fish, resulting in consumption advisories. The USGS reports that the sedimentary supply of mercury to the Delta and in Delta sediments (cinnabar, metacinnabar, and elemental Hg) typically are insoluble, but will pose an environmental hazard if they are (1) solubilized and (2) methylated in Delta and Estuary wetlands.

**Budget Act.** The *2009-10 Budget Act* includes \$2.3 million in Proposition 13 bond funds for the Department of Water Resources to reduce methyl mercury in abandoned mines in the Delta. The funds include support for a best management practices study that would reduce methyl mercury from the Yolo Basin and other wetlands.

Also, the Central Valley Regional Water Board is currently creating the Total Maximum Daily Load (TMDL) requirements for mercury. These requirements will impact how mercury is treated for in the water supply.

**Staff Comment.** The Department of Water Resources is focused on water supply issues while the State Water Resources Control Board works on water quality issues. To gain perspective on the impact of mercury in wetlands that stay wet year round, it may be beneficial to have the Water Board conduct additional testing on water quality, as well as to establish best management practices in the development of new wetlands, including pre- and post- monitoring for new wetlands projects.

## 2. Missing Reports

**Background.** As part of the *2008-09 Budget Act*, the Legislature passed the following two supplemental report languages:

1. *San Diego Bay Toxic Sediment Cleanup.* On or before January 30, 2009, the State Water Resources (SWRCB) shall submit a report to the Joint Legislative Budget Committee (JLBC) on the work of the San Diego Regional Water Quality Control Board (SDRWCB) on San Diego Bay cleanup. The report shall include information on the resources the SDRWCB is dedicating to the project, the estimated total cost and scope of the project, and a progress report for the project.
2. *Agricultural Water Runoff.* On or before March 30, 2009, SWRCB shall submit a report to the JLBC and to the relevant policy committees that details: (a) the precise actions the SWRCB would have to undertake to obtain a 30 percent reduction to agricultural



pollution runoff into the Sacramento-San Joaquin Delta and its tributary watersheds by 2012, (b) the estimated costs of those actions, and (c) which of those actions can be completed administratively and which would require legislation to implement.

**Staff Recommendation.** Staff recommends that the Subcommittee withhold action on SWRCB actions until the reports are received.

### 3. Underground Storage Tank Funding Brownfield Initiative

**Background.** The Underground Storage Tank Cleanup Fund (USTCF) acts as an insurance program for Underground Storage Tank (UST) operators. The USTCF provides up to \$1.5 million in reimbursements per occurrence to petroleum UST owners and operators to fix leaks in USTs. Funds for the USTCF come from a fee of \$0.014 per gallon of petroleum per gallon stored. The USTCF has been authorized to expend approximately \$200 million per year.

Since 1992 the USTCF has received 19,000 claims, 11,000 of which received letters of commitment. The claimants include individuals, small businesses, local governments, and major corporations. Statute mandates a priority system where individuals and small businesses have their claims addressed first. As of June 2008, the department had over 3,400 claims that are over five years old.

**Governor's Budget.** The Governor's Budget proposes \$719,000 from the Underground Storage Tank Cleanup Fund and five temporary positions to review claims that have been active for more than five years.

**Budget Act.** The *2009-10 Budget Act* did not fund the Governor's Budget request of \$719,000 for five temporary positions.

**Finance Letter.** The Governor submitted a finance letter proposing two fund transfers from the Underground Storage Tank Cleanup Fund (USTCF):

1. \$10 million to the School District Account in the USTCF
2. \$20 million to the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund

**Staff Recommendation.** Staff recommends that the Subcommittee hold action on this item.

### 4. Water Rights Program

**Water Rights Based on Priorities.** Water rights are based on a priority system that is used to determine who can continue taking water when there is not enough water to supply all needs. Those with high priority rights know that they are likely to receive water. Those with low priority rights know that they may not receive water in all years and can plan accordingly.

**Riparian Water Rights.** A riparian water right is a right to use the natural flow of water on riparian land. Riparian land is land that touches a lake, river, stream, or creek. California is the only western state that continues to recognize riparian rights. The California Legislature has enacted very few laws regarding riparian rights. As a result, riparian rights have been frequently litigated. As a result of these lawsuits, the courts have clarified rules that apply to riparian rights. If there is not enough water available for competing riparian users, they must share the available supply according to their needs. Generally in this situation, water used for interior domestic purposes, such as drinking, cooking, and bathing, has the highest priority.

**Water Right Permits.** Water right permits include conditions to protect other water users and the environment. The State Water Resources Control Board (Water Board) has continuing authority over permits that it issues, and it can modify permits and licenses it previously issued to require more protective conditions. The Water Board must provide the permit or license holder with notice and opportunity for a hearing before making changes. If the permit holder disagrees with the Water Board's decision to modify the permit, it can ask the court to review the matter.

**Water Rights Administration.** Water rights law is administered by the Water Board. Within the Water Board, the Division of Water Rights acts on behalf of the Water Board for day to day administrative matters. The Water Board is the only agency with authority to administer water rights in California.

**Staff Comment.** Staff recommends that the Subcommittee approve Supplemental Report Language requiring:

On or before January 30, 2010, the State Water Resources (SWRCB) shall submit a report to the Joint Legislative Budget Committee (JLBC) and relevant policy committees a planning document for creating greater efficiency in administering and enforcing water rights in the state. The report shall include a cost estimate for implementation of the plan.

## 5. Confined Animal Facilities Permitting

**Permit Requirements.** There are approximately 2,000 confined animal facilities in the Central Valley. The majority of these are operating under a general waiver of the Waste Discharge Requirements (WDR) due to their smaller size. There are 64 facilities in the Central Valley that have individual WDR permits, and about 250 facilities that are regulated under the National Pollutant Discharge Elimination System (NPDES).

The United States Environmental Protection Agency (USEPA) required under the Federal Clean Water Act that all confined animal facilities with more than 1,000 animals obtain an NPDES permit. The Regional Water Boards are supposed to issue these permits. However, to date, no permits have been issued in the Central Valley and applications are waiting for review.

**Staff Comment.** The large confined animal facilities contribute to nitrate pollutants in the groundwater. By not issuing permits and recommending mitigation measures, the Water Board is allowing a known source of groundwater pollution to go unchecked.